



NO. 348

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*In the Supreme Court of the United States*

OCTOBER TERM, 1941

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THE SEMINOLE NATION, PETITIONER

*v.*

THE UNITED STATES

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT  
OF CLAIMS

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

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## **OPINION BELOW**

The opinion of the Court of Claims (R. 21-39), as modified upon rehearing (R. 39-42), is not yet reported. For earlier decisions in this case, see 82 C. Cls. 135 and 299 U. S. 417.

## **JURISDICTION**

The judgment of the Court of Claims sought to be reviewed was entered on January 6, 1941 (R. 39). A motion by petitioner for a new trial was allowed, and the findings and opinion were modified in a few particulars on May 5, 1941 (R. .

39-43). The petition for a writ of certiorari was filed August 5, 1941. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

#### QUESTIONS PRESENTED

Petitioner brought this suit in the court below to recover claims totaling \$1,183,204.48 (R. 2-8). The court held that the United States was liable to petitioner for \$18,388.30; that the United States was entitled to gratuity offsets of \$705,337.33; and that accordingly the complaint should be dismissed (R. 42, 39). The petition for certiorari seeks to have this Court reexamine numerous items involved in this complex account. Petitioner's contentions with respect to each of the controverted items are dealt with in the Argument.

#### STATUTES AND TREATIES INVOLVED

The pertinent portions of the treaties and statutes involved are set forth in the appendix in chronological order.

#### STATEMENT

A comprehensible statement of each of the many accounting details which underlie the decision below would expand this brief in opposition to a point which would defeat its purpose. The relevant facts, treaties, and statutes are extensively discussed in the findings (R. 8-20) and the



opinion (R. 21-43) of the Court of Claims: The Argument, below, indicates the relevant treaties and statutes, and summarizes the accounting details with particularity sufficient to show the nature of the questions presented by petitioner.

#### ARGUMENT

The judgment of the Court of Claims dismissing the petition and denying recovery is not in conflict with any decision of this Court or of any circuit court of appeals and presents no question of importance.<sup>1</sup> Furthermore, the judgment below is correct as to each of the items in controversy:

A. Item 1 (Fdg. 3) is a claim for \$61,563.42 based on the Government's promise in Article VIII of the Treaty of August 7, 1856, 11 Stat. 699, to provide \$7,200 annually for ten years for the support of schools, for agricultural assistance, and for smiths and smith shops for the Seminole Nation. Although Congress annually made the necessary appropriations to fulfill this treaty obligation, only \$10,436.58 was actually expended for the purposes specified in the Treaty (R. 11). The

<sup>1</sup>The mere fact that the court below, after the case had been remanded (299 U. S. 417) and more thoroughly briefed, reached a different conclusion (R. 21-42) from that which it had expressed in its first opinion in 1935 (82 U. Cls. 135) does not, as petitioner would seem to intimate (Pet. 12), warrant the issuance of a writ of certiorari. There is no "conflict" or "confusion" (cf. Pet. 6, 12); the later decision controls.



balance of \$61,563.42 was disbursed by the United States to feed and clothe loyal refugee and destitute Indians who were driven from their homes because of their loyalty to the Union during the Civil War (R. 12), the tribe itself having elected to support the Confederacy. Report of the Commissioner of Indian Affairs, 1863, pp. 21, 185.

These diversions, as the court below pointed out (R. 21-23), were authorized by statute. For example, the Resolution of February 22, 1862, No. 13, 12 Stat. 614, expressly authorized the Secretary of the Interior to use the annuities of the Seminoles, Creeks, Choctaws, and Chickasaws, for "the relief of such portions of said tribes as have remained loyal to the United States, and have been or may be driven from their homes." Similar provisions are to be found in the Indian Appropriation Act of July 5, 1862, 12 Stat. 512, 528; the Indian Appropriation Act of March 3, 1863, 12 Stat. 774, 793; the Indian Appropriation Act of June 25, 1864, 13 Stat. 161, 180; and the Indian Appropriation Act of March 3, 1865, 13 Stat. 541, 562.

Even if such expenditures were not originally authorized, they have since been ratified by the Seminoles, and any claim for wrongful diversion of these trust funds was waived by the tribe in the Treaty of March 21, 1866, 14 Stat. 755, 759, which provides:

The stipulations of this treaty are to be a full settlement of all claims of said Semi-

nole nation for damages and losses of every kind growing out of the late rebellion, and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose; consequent upon the late war with the so-called confederate states. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made from the funds of the Seminole Nation by the United States. \* \* \*

It follows that the court below rightly disallowed the claim for \$61,563.42.

B. Item 2 (Fdg. 5) is a claim for \$154,551.28 which is based on another provision in Article VIII of the Treaty of August 7, 1856, 11 Stat. 699, namely, the Government's promise to establish a \$500,000.00 trust fund and to appropriate annually the interest therefrom (\$25,000.00) for *per capita* payments to members of the tribe. Petitioner contends that the United States failed to pay the full amount of the interest in certain years (the deficiency amounting to \$104,551.28) and that it mispaid the money (\$50,000.00) in 1908 and 1909.

Although Congress appropriated \$25,000.00 annually for each of the fiscal years in controversy (1867 to 1909), the findings show that the Government did in fact fail to make direct *per capita* disbursements of the entire appropriation in 1867-1874, 1876, 1879, and 1907; the underpayments for those eleven years amounting to \$104,551.28

(R. 13). But the findings also show (R. 13) that the direct *per capita* payments exceeded \$25,000.00 in five different years (1875, 1877, 1880, 1882 and 1883). These overpayments totaling \$12,127.54 should, of course, be deducted; petitioner does not contend to the contrary.

• There should likewise be deducted the interest (\$66,422.64) which was paid from this fund directly to the tribal treasurer during the period from 1870 to 1874. These payments were made at the request of the Seminole General Council for distribution to certain named members of the tribe (R. 13, 46-50). At the time these payments were made the plaintiff tribe conducted its affairs through its established tribal council. Since the payments were made at its request, the tribe is estopped to ask that these payments be made a second time. Cf. *The Sac and Fox Indians*, 220 U. S. 481.

Similarly, the Government is entitled to deduct the interest payments of \$62,500.00 expended by the United States Indian Agent in 1907, 1908, and 1909 for the Seminole Nation (R. 13).<sup>2</sup> Cf. *Creek*

<sup>2</sup> There is no formal finding that the United States Indian Agent actually disbursed the \$62,500.00 which was paid to him in 1907, 1908, and 1909. But the report of the General Accounting Office, which was filed as part of the record in this case and which has not been challenged by either party, shows that these monies were in fact expended by the Indian Agent for the benefit of the tribe, namely, for "per capita payments" and for "administrative expenses Seminole National Government" (pp. 308-310).

*Nation v. United States*, 78 C. Cls. 474, 493.

These payments were made to the Agent pursuant to the Act of April 26, 1906, 34 Stat. 137, 141, which expressly declared:

That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. \* \* \*

Since these three offsets of \$12,127.54, \$66,422.64 and \$62,500.00 are properly deductible, it follows that petitioner's claim for \$154,551.28 was rightly reduced to \$13,501.10, the amount allowed by the court below (R. 23-25, 42).

C. Item 3 (Fdg. 6) is a claim for \$61,347.20 based on Article III of the treaty of March 21, 1866, 14 Stat. 755, in which the United States agreed to establish a \$50,000 trust fund, the interest therefrom (\$2,500) to be used annually for "the support of schools." The \$61,347.20 claim

is composed of three items: (1) \$3,097.20 for underpayments during the years 1867 to 1874; (2) \$57,500.00 representing 23 annual payments made to the Seminole Tribal Treasurer from 1875 to 1898, these payments having allegedly been made to that officer without authority of law; and (3) a \$750.00 payment made in 1907 to the United States Agent, this payment allegedly not being authorized by the Act of April 26, 1906, 34 Stat. 137, 141.

(1) The court below found, and the parties agree, that of the \$20,000 appropriated from 1867 to 1874, only \$16,902.80 was disbursed for the support of schools, and that accordingly \$3,097.20 is now due the Seminoles (R. 14, 26):

(2) But the Seminoles are not entitled to recover the \$57,500.00 which was actually paid to their tribal treasurer from 1875 to 1897 (R. 14). During that period the Seminoles had their own government and conducted their own schools. Under these circumstances the tribal treasurer was an entirely appropriate person to receive the interest payment for the support of schools. There was no requirement that the money be expended directly by the United States. And the evidence shows that at least \$2,500 was actually expended every year by the Tribe for school purposes (R. 25-26). It follows that the United States is not liable to the Seminoles for the \$57,500.00 which it paid to the tribal treasurer out

of the trust fund established by Article III of the 1866 treaty:

(3) Nor is the Government liable for the \$750.00 paid to the United States Agent in 1907, because that payment was fully authorized by the 1906 Act (*supra*, p. 7).

D. Item 4 (Fdg. 7) is a claim for \$9,068.24 based on the Government's promise in Article VI of the Treaty of March 21, 1866, 14 Stat. 755, to construct, "at an expense not exceeding ten thousand (\$10,000) dollars, suitable agency buildings" on the Seminole reservation. The record shows that in 1870 and 1872 \$931.76 was expended from general appropriations "for agency buildings and repairs" (R. 15). The record also shows that Congress in 1872 appropriated \$10,000 to fulfill this treaty obligation. Act of May 18, 1872, 17 Stat. 122, 132 (R. 14-15). Since only \$969.85 was returned to surplus, it is quite evident that \$9,030.15 was expended for some purpose, but for what purpose does not appear. (R. 15). However, it does appear from the Report of Commissioner of Indian Affairs for 1873 (pp. 211-212) that an agency building was erected on the Seminole Reservation in that year (R. 26-27). There

Petitioner contends that the 1873 Report merely shows that some sort of building was "in the process of being constructed" (Pet. 22). The Report reads as follows:

"Since the agency building was commenced, the 10th of July, some dissatisfaction has been produced, because all



is no showing by the plaintiff that this was not a "suitable" building. Inasmuch as Article VI provided merely for the erection of "suitable agency buildings," "at an expense not exceeding ten thousand (\$10,000) dollars," it follows that there has been no violation of this provision of the 1866 treaty.

E. Item 5 (Edg. 8), is a claim for \$864,702.58 arising out of the Government's alleged wrongful payment of that sum to the tribal treasurer, petitioner's contention being that Section 19 of the Curtis Act of June 28, 1898, 30 Stat. 495, forbade any further payments directly to the tribe or its officers. But Section 19 had no such effect. *Choctaw Nation v. United States*, 91 C. Cls. 320, certiorari denied 312 U.S. 695. It merely prohibited payments to tribal officers "for disbursement," that is, payments for *per capita* distribution. Payments for tribal purposes could still be made to the tribal treasurer. This is the plain implication of the language of the Act and, as the court below pointed out, this construction finds support in the Act's legislative history (R. 29-30).

who made application did not obtain employment, and those who did obtain it appear sorry that their labor is *about ended there, the building being now nearly finished.* [*Italics supplied.*]

This statement, coupled with the fact that \$10,000 was appropriated for an agency building and that \$9,030.15 thereof was actually expended for some purpose, amply supports the court's finding that a building "was erected" (R. 27).



While it is true that \$212,500 of the \$864,702.58 claim represents monies paid to the tribal treasurer for *per capita* distribution to the Indians in violation of Section 19 of the Curtis Act, the passage of this Act did not create any vested rights in the individual Indians. Nor did the statute amount to an agreement with the tribe for the benefit of its individual members. It was merely a direction to the agents of the United States, which Congress could change at will. *The Sac and Fox Indians*, 220 U. S. 481. Admittedly, the Tribe received the money; in fact, the money was paid to the tribal treasurer pursuant to a request of the General Council (R. 15). As the court below said (R. 30): "Plainly \* \* \* the Nation cannot maintain an action for the payment of it a second time."

F. Petitioner attacks the decision below, not only because of the court's denial of a number of the claims alleged in the complaint, but also (Pet. 41-55) because of the court's action in allowing gratuity offsets totaling \$705,337.33 (R. 42). These offsets, allowed under the Act of August 12, 1935, 49 Stat. 571, 596, are explained in detail in the findings (Nos. 9-19, R. 16-20) and in the opinion of the court below (R. 30-39, 41-43). It would serve no useful purpose to examine the offsets again here, item by item, since petitioner concedes that the Government is entitled to offsets far in excess of \$18,388.30, the

amount found to be due the tribe.\* This concession, without more, justifies the judgment dismissing the complaint and denying recovery (R. 39).

#### CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

CHARLES FAHY,

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SEPTEMBER 1941.

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\* For example, the \$31,083.79 in finding 9 (R. 16) is admittedly a proper offset (R. 30). Similar concessions have been made as to other items (R. 33, 35, 37).

## APPENDIX

Article VIII of the Treaty with the Creeks and Seminoles of August 7, 1856, 11 Stat. 699, 702:

The Seminoles hereby release and discharge the United States from all claims and demands which their delegation have set up against them, and obligate themselves to remove to and settle in the new country herein provided for them as soon as practicable. In consideration of such release, discharge, and obligation, and as the Indians must abandon their present improvements, and incur considerable expense in reestablishing themselves, and as the government desires to secure their assistance in inducing their brethren yet in Florida to emigrate and settle with them west of the Mississippi River, and is willing to offer liberal inducements to the latter peaceably so to do, the United States do therefore agree and stipulate as follows, viz: To pay to the Seminoles now west, the sum of sixty thousand dollars, which shall be in lieu of their present improvements, and in full for the expenses of their removal and establishing themselves in their new country; to provide annually for ten years the sum of three thousand dollars for the support of schools; two thousand dollars for agricultural assistance; and two thousand two hundred dollars for the support of smiths and smith shops among them, said sums to be applied to these objects in such manner as the President shall direct. Also

to invest for them the sum of two hundred and fifty thousand dollars, at five per cent. per annum, the interest to be regularly paid over to them *per capita* as annuity; the further sum of two hundred and fifty thousand dollars shall be invested in like manner whenever the Seminoles now remaining in Florida shall have emigrated and joined their brethren in the west. Whereupon the two sums so invested, shall constitute a fund belonging to the united tribe of Seminoles, and the interest on which, at the rate aforesaid, shall be annually paid over to them *per capita* as an annuity; but no portion of the principal thus invested, or the interest thereon annually due and payable, shall ever be taken to pay claims or demands against said Indians, except such as may hereafter arise under the intercourse law.

Resolution of February 22, 1862, No. 13, 12 Stat. 614:

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Interior be authorized to pay out of the annuities payable to the Seminoles, Creeks, Choctaws, and Chickasaws, and which have not been paid, in consequence of the cessation of intercourse with those tribes, so much of the same as may be necessary to be applied to the relief of such portions of said tribes as have remained loyal to the United States, and have been or may be driven from their homes in the Indian Territory into the State of Kansas or elsewhere.

Pertinent provisions of the Indian Appropriation Act of July 5, 1862, 12 Stat. 512, 528:

For defraying the expenses of the removal and subsistence of Indians in Oregon and Washington Territory (not parties to any treaty) and for pay of necessary employees, fifty thousand dollars: *Provided*, That all appropriations heretofore or hereafter made to carry into effect treaty stipulations, or otherwise, in behalf of any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, may and shall be suspended and postponed wholly or in part at and during the discretion and pleasure of the President: *Provided, further*, That the President is authorized to expend such part of the amount heretofore appropriated and not expended and hereinbefore appropriated and not expended and hereinbefore appropriated for the benefit of the tribes named in the preceding proviso as he may deem necessary, for the relief and support of such individual members of said tribes as have been driven from their homes and reduced to want on account of their friendship to the government. \* \* \* *And provided, further*, That in cases where the tribal organization of any Indian tribe shall be in actual hostility to the United States, the President is hereby authorized, by proclamation, to declare all treaties with such tribe to be abrogated by such tribe, if, in his opinion, the same can be done consistently with good faith and legal and national obligations.

Section 3 of the Indian Appropriation Act of March 3, 1863, 12 Stat. 774, 793:

SEC. 3. *And be it further enacted*, That the Secretary of the Interior be, and he is hereby authorized to expend such part of the amount heretofore appropriated to carry into effect any treaty stipulation with any tribe or tribes of Indians, all, or any portion of whom shall be in a state of actual hostility to the Government of the United States, including the Cherokees, Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, as may be found necessary to enable such individual members of said tribes as have been driven from their homes, and reduced to want on account of their friendship to the United States, to subsist until they can be removed to their homes, and to assist them in such removal. \* \* \*

Section 2 of the Indian Appropriation Act of June 25, 1864, 13 Stat. 161, 180:

SEC. 2. *And be it further enacted*, That the Secretary of the Interior be, and he is hereby, authorized to expend such part of the amount herein appropriated to carry into effect any treaty stipulation with any tribe or tribes of Indians, all, or any portion of whom, shall be in a state of actual hostility to the government of the United States, including the Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, as well as the Cherokees, as may be found necessary to support such individual members of said tribes as have been driven from their homes or reduced to want on account of their friendship to the United States, and enable them to subsist



until they can support themselves in their own country: \* \* \*

Section 5 of the Indian Appropriation Act of March 3, 1865, 13 Stat. 541, 562.

SEC. 5. *And be it further enacted*, That the Secretary of the Interior be, and he is hereby, authorized to expend such part of the amount herein appropriated to carry into effect any treaty stipulation with any tribe or tribes of Indians, all or any portion of whom shall be in a state of actual hostility to the government of the United States, including the Creeks, Choctaws, Chickasaws, Seminoles, Wichitas, and other affiliated tribes, as well as the Cherokees, as may be found necessary to support such individual members of said tribes as have been driven from their homes or reduced to want on account of their friendship to the United States, and enable them to subsist until they can support themselves in their own country: \* \* \*

Treaty with the Seminole Indians of March 21, 1866, 14 Stat. 755:

ARTICLE III. \* \* \* the United States agree to pay, in the following manner, to wit: Thirty thousand dollars shall be paid to enable the Seminoles to occupy, restore, and improve their farms, \* \* \* seventy thousand dollars to remain in the United States treasury, upon which the United States shall pay an annual interest of five per cent; fifty thousand of said sum of seventy thousand dollars shall be a permanent school fund, the interest of which shall be paid annually and appropriated to the support of schools; the remainder of



the seventy thousand dollars, being twenty thousand dollars, shall remain a permanent fund, the interest of which shall be paid annually for the support of the Seminole government; \* \* \*

ARTICLE VI. Inasmuch as there are no agency buildings upon the new Seminole reservation, it is therefore further agreed that the United States shall cause to be constructed, at an expense not exceeding ten thousand (\$10,000) dollars, suitable agency buildings, the site whereof shall be selected by the agent of said tribe, under the direction of the superintendent of Indian affairs; in consideration whereof, the Seminole nation hereby relinquish and cede forever to the United States one section of their lands, upon which said agency buildings shall be *directed* [erected], which land shall revert to said nation when no longer used by the United States, upon said nation paying a fair value for said buildings at the time vacated.

ARTICLE VIII. The stipulations of this treaty are to be a full settlement of all claims of said Seminole nation for damages and losses of every kind growing out of the late rebellion, and all expenditures by the United States of annuities in clothing and feeding refugee and destitute Indians since the diversion of annuities for that purpose, consequent upon the late war with the so-called confederate states. And the Seminoles hereby ratify and confirm all such diversions of annuities heretofore made

from the funds of the Seminole nation by the United States. And the United States agree that no annuities shall be diverted from the objects for which they were originally devoted by treaty stipulations with the Seminoles, to the use of refugee and destitute Indians, other than the Seminoles or members of the Seminole nation, after the close of the present fiscal year, June thirtieth, eighteen hundred and sixty-six.

Pertinent provisions of the Deficiency Appropriation Act of May 18, 1872, 17 Stat. 122, 132:

For this amount, to replace the sum appropriated by the act of July twenty-eighth, eighteen hundred and sixty-six, under the provision of the sixth article of treaty with the Seminoles of March twenty-first, eighteen hundred and sixty-six, and ninth article of the treaty with the Creeks of June fourteenth, eighteen hundred and sixty-six, for the erection of agency buildings on the reservations of said tribes, twenty thousand dollars.

Curtis Act of June 28, 1898, 30 Stat. 495, 503:

SEC. 19. That no payment of any moneys on any account whatever shall hereafter be made by the United States to any of the tribal governments or to any officer thereof for disbursement, but payments of all sums to members of said tribes shall be made under direction of the Secretary of the Interior, by an officer appointed by him; and per capita payments shall be made direct to each individual in lawful money of the United States, and the same shall not be liable to the payment of any previously contracted obligation.

Section 11 of the Act of April 26, 1906, 34 Stat. 137, 141:

SEC. 11. That all revenues of whatever character accruing to the Choctaw, Chickasaw, Cherokee, Creek, and Seminole tribes, whether before or after dissolution of the tribal governments, shall, after the approval hereof, be collected by an officer appointed by the Secretary of the Interior under rules and regulations to be prescribed by him; and he shall cause to be paid all lawful claims against said tribes which may have been contracted after July first, nineteen hundred and two, or for which warrants have been regularly issued, such payments to be made from any funds in the United States Treasury belonging to said tribes. \* \* \*

Section 2 of the Act of August 12, 1935, 49 Stat. 571, 596:

SEC. 2. In all suits now pending in the Court of Claims by an Indian tribe or band which have not been tried or submitted, and in any suit hereafter filed in the Court of Claims by any such tribe or band, the Court of Claims is hereby directed to consider and to offset against any amount found due the said tribe or band all sums expended gratuitously by the United States for the benefit of the said tribe or band; and in all cases now pending or hereafter filed in the Court of Claims in which an Indian tribe or band is party plaintiff, wherein the duty of the court is merely to report its findings of fact and conclusions to Congress, the said Court of Claims is hereby directed to include in its report a statement of the amount of money which has been expended

by the United States gratuitously for the benefit of the said tribe or band: *Provided*, That expenditures made prior to the date of the law, treaty, agreement, or Executive order under which the claims arise shall not be offset against the claims or claim asserted; \* \* \* *Provided further*, That funds appropriated and expended from tribal funds shall not be construed as gratuities; \* \* \*